

APPEAL NO. 023073
FILED JANUARY 14, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 1, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____, and had disability beginning April 5, 2002, and continuing through the date of the hearing. The appellant (carrier) contends that this decision is against the great weight of the evidence and that the hearing officer erred in denying its motion for continuance. The claimant urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Whether the claimant sustained a compensable injury and had disability were factual questions for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's compensability and disability determinations are so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The carrier asserts on appeal that the hearing officer erred in denying its motion for continuance, which was faxed to the Texas Workers' Compensation Commission (Commission) two days prior to the hearing date. Section 410.155 provides that a written request by a party for a continuance of a hearing to another date must be directed to the Commission and that the Commission may grant a continuance of a hearing to another date only if it determines there is good cause for doing so. We review a ruling on a request for a continuance under an abuse-of-discretion standard; that is, whether the hearing officer acted without reference to any guiding principles. Texas Workers' Compensation Commission Appeal No. 951252, decided September 13, 1995. The guiding principle or test for the existence of good cause to grant a continuance is whether the movant exercised the degree of diligence in prosecuting the case that an ordinary person would have exercised under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 970135, decided March 12, 1997. The carrier requested the continuance in order to obtain documents that had been subpoenaed, but not yet received. The hearing officer noted that the benefit review conference was held on September 12, 2002, that the carrier did not make a request for the subpoenas until October 18, 2002, and that no good cause

was shown for granting a continuance. Under these facts, we cannot agree that the hearing officer abused her discretion in denying the carrier's request for a continuance.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Chris Cowan
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge